BLANK
PAGE

LIBRARY
SUPREME COURT, U.S.

Office-Supreme Court, U.S.
FILED
OCT 15 1965
JOHN F. DAVIS, CLERK

Supreme Court of the United States

October Term, 1965
No. 487

WILLIAM MALAT and ETHEL MALAT,

Petitioners,

vs.

ROBERT A. RIDDELL, District Director of Internal Revenue,

Respondent.

Petitioners' Reply Brief.

GEORGE T. ALTMAN,
424 South Beverly Drive,
Beverly Hills, Calif. 90212,
Attorney for Petitioners.

Parker & Son, Inc., Law Printers, Los Angeles, Phone MA. 6-3056.

BLANK
PAGE

IN THE

Supreme Court of the United States

October Term, 1965

No. 487

WILLIAM MALAT and ETHEL MALAT,

Petitioners,

vs.

ROBERT A. RIDDELL, District Director of Internal Revenue,

Respondent.

Petitioners' Reply Brief.

Respondent points out no inaccuracy or omission in the Statement given in the petition, but writes his own completely separate Statement, thereby ignoring Rule 40-3 of this Court's rules. That separate Statement of his, by omissions and rephrasing, seriously distorts some of the facts. In view of that situation, we urge the Court to use the Statement in the petition instead.

Respondent in his argument similarly distorts the findings and opinions below. Neither court below said, as respondent would have this Court infer (Br. p. 10), that there was a purpose of sale "equally important at the outset" to the purpose of investment. Nor did either court, as respondent implies (Br. p. 10), place a change of purpose anywhere in a broad period of time by saying that the sale purpose "subsequently" became primary

or predominant. What the court below did was to fix the precise point of time by saying that "when taxpayer resolved to sell" that purpose became the primary one. (Pet. App. p. 9). Of course, the statement with that precise point of time defeats itself since, as observed in the petition, p. 9, it is equally true of *all* property, for whatever purpose held; and that, it must be concluded, is why respondent restated it.

Petitioners submit that the Eighth Circuit, in *Municipal Bond Corporation v. Commissioner*, 341 F. 2d 683, held that:

> (1) in determining the primary purpose for which taxpayers held property, all relevant circumstances prior to the time of its disposition must be considered, and
>
> (2) the term "primarily", as used in Section 1221(1) of I.R.C. 1954, does not mean "substantial", or "one of dual purposes".

The opinion of the court below, in the instant case, holds precisely the opposite on both of these points. The conflict does not arise because of, nor is it reconcilable by, nice semantic distinctions.

If the Eighth Circuit's interpretation of Section 1221(1) is correct, then petitioners clearly are entitled to treat the gain on the sale of property involved here as a long-term capital gain. Only by a decision of this court can the palpable conflict of law between the Eighth and Ninth Circuits on the issues stated be resolved.

Respectfully submitted,

GEORGE T. ALTMAN,
Attorney for Petitioners.

BLANK
PAGE